



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENT BY U.S. MAIL AND FAX TO (312) 329-8256

JUN 19 2007

Ralph W. Holmen
Associate General Counsel
National Association of Realtors
430 North Michigan Avenue
Chicago, Illinois 60611

RE: MURs 5577 and 5620
National Association of Realtors
National Association of Realtors PAC
National Association of Realtors – 527 Fund

Dear Mr. Holmen:

On May 24, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of National Association of Realtors – 527 Fund in settlement of violations of 2 U.S.C. § 433, 434, and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, the Commission voted to dismiss the National Association of Realtors from the complaints. Accordingly, the file has been closed in these matters.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Elena Paoli".

Elena Paoli
Attorney

Enclosure: Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Association of Realtors – 527 Fund) MURs 5577 and 5620

CONCILIATION AGREEMENT

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This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that National Association of Realtors – 527 Fund ("the Respondent" or "NAR 527") violated 2 U.S.C. §§ 433 and 434 of the Federal Election Campaign Act, as amended, ("the Act") by failing to register as a political committee.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

Applicable Law

1. The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a political committee as "any committee, club, association, or other group of persons

which ... makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A).

2. The Act defines the term "expenditure" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

3. Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986) ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also include[s] verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F. Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley v. Valeo*, 424 U.S. 1, 44, n.52 (1976), included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

4. The Commission's regulations further provide that express advocacy includes communications containing an electoral portion that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election. See 11 C.F.R.

§ 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated that "communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question." *Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 Fed. Reg. 35292, 35295 (July 6, 1995) ("Explanation & Justification").

5. The Supreme Court has held that "[t]o fulfill the purposes of the Act" and avoid "reach[ing] groups engaged purely in issue discussion," only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). It is well-settled that an organization can satisfy *Buckley's* "major purpose" test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264; *see also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310 n.11 (S.D. Ala. 2002).

6. The Act requires all political committees to register with the Commission and file a statement of organization within ten days of becoming a political committee, including the name, address, and type of committee; the name, address, relationship, and type of any connected organization or affiliated committee; the name, address, and position of the custodian of books and accounts of the committee; the name and address of the treasurer of the committee; and a listing of all banks, safety deposit boxes, or other depositories used by the committee. *See* 2 U.S.C. § 433.

7. Each treasurer of a political committee shall file periodic reports of the committee's receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the case of committees that are not authorized committees of a candidate for Federal office, these

reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C. § 434(b)(4).

8. Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any political committee to knowingly accept or receive, directly or indirectly, any contribution from a corporation.

Factual Background

9. NAR 527 is organized under Section 527 of the Internal Revenue Code, and is associated with the National Association of Realtors ("NAR"), a Section 501(c)(6) corporation based in Chicago, Illinois. NAR 527 is not registered with the Commission as a political committee

10. NAR 527 was formed in October 2000. Since that time, NAR 527 has received all of its funds from NAR.

11. During the 2004 election cycle, NAR 527 received approximately \$2.9 million from NAR and received no other funds. NAR 527 spent approximately \$2.8 million to create and distribute to the public various communications that clearly identified nine federal candidates, almost \$2.3 million of which financed dozens of direct mail pamphlets and newspaper advertisements.

12. NAR 527 disseminated the direct mailings and newspaper advertisements to the general public in September and October 2004, except for direct mailings that clearly identified Representative Johnny Isakson, which were mailed in September and October 2003 and again from January through June 2004. NAR 527 distributed all of the direct mailings and

newspaper advertisements to households in the electoral districts where these candidates, almost all incumbents, sought office, and, in the case of some of the direct mailings, to specific kinds of voters, such as registered independent voters or voters that tend to vote for candidates of a particular political party. For example, NAR 527 sent pamphlets that clearly identified then-Representative Richard Burr, who was running for U.S. Senate, to independent voters throughout the entire state of North Carolina. Likewise, NAR 527 sent pamphlets that clearly identified then-Representative Johnny Isakson, who was running for U.S. Senate, to Republican voters throughout Georgia, except Atlanta.

Expenditures

13. The Commission concludes that certain communications disseminated by NAR 527 before the 2004 general election expressly advocated that recipients vote for a clearly identified federal candidate within the meaning of 11 C.F.R. §§ 100.22(a) and (b).

14. For example, in September and October 2004, NAR 527 mailed a four-page pamphlet to independent voters in selected areas throughout North Carolina at a cost of \$70,718.75 that the Commission concludes expressly advocated the election of Richard Burr for Senate.

15. The first page of one four-page pamphlet contains the slogan "Richard Burr -- Building a Stronger North Carolina ... One Neighborhood at a Time" superimposed on a photo of a house. The second page has photos of a porch railing and an American flag waving from a house. The third page repeats the phrase "Richard Burr -- Building a *Stronger* North Carolina ... One Neighborhood at a Time" in large type at the top of the page next to a photo of Burr and above smaller photos of a family, a physician examining a child, money, and a person working at a computer. Below the photos is text that describes Burr's stances on various issues,

including health care, taxes, and home downpayment assistance, and identifies him as a member of Congress. The fourth page is headlined in large type "Richard Burr – Works to Make *North Carolina Stronger*" and contains two photographs of families. Additional text on this page states, "For over a decade, Richard Burr has been a leader in the effort to improve the quality of life in North Carolina. He has the experience to make North Carolina stronger."

16. The pamphlet uses two slogans that focus on Burr, "Richard Burr – Building a Stronger North Carolina ... One Neighborhood at a Time," and "Richard Burr – Works to Make North Carolina Stronger. The first page of the flyer contains the "Richard Burr – Building a Stronger North Carolina" slogan as a stand-alone phrase and repeats the same language on page 3. The similar phrase, "Richard Burr – Works to Make North Carolina Stronger," appears as the title of page 4. Burr's name in large type and font also headlines pages 3 and 4. All of the praise for Burr's record on the inside pages of the brochure begins with the name "Richard Burr" – four additional times on page 3 alone.

17. NAR 527 disseminated three similar pamphlets in September and October 2004 that the Commission concludes expressly advocated the elections of Anne Northup for Kentucky's Third Congressional District, Rick Renzi for Arizona's First Congressional District, and Johnny Isakson for Senate in Georgia.¹ All three pamphlets contain the same repeated use of the candidate's name in large, bold font, and slogans, such as "Anne Northup/Making the American Dream a Reality in Kentucky," "Rick Renzi/Improving the Quality of Life in Arizona," and "Congressman Johnny Isakson – Committed to the American Dream."

¹ The Northrup pamphlet cost \$36,625.13, the Renzi pamphlet cost \$33,816.80. and the Isakson pamphlet cost \$52,502.25.

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18. NAR 527 also disseminated newspaper advertisements that the Commission concludes expressly advocated the election of clearly identified federal candidates. For example, NAR 527 disseminated two almost identical newspaper advertisements in October 2004, one in Texas's Third Congressional District, where Ruben Hinojosa was running for reelection and the second in Maryland's Fifth Congressional District, where Steny Hoyer was seeking reelection.² The ads are headlined in large type with "SOME PROMISE. CONGRESSMAN RUBEN HINOJOSA [STENY HOYER] DELIVERS." Directly below are portrait-like photographs of the candidates, with the U.S. flag and law books behind them, with the slogan "FIGHTING FOR THE AMERICAN DREAM." Smaller-sized text describes their accomplishments on various issues such as Veterans' benefits and identity theft. Toward the bottom of the ad, in larger type is "OUR CONGRESSMAN RUBEN HINOJOSA [STENY HOYER] ... BECAUSE RESULTS DO MATTER."

19. Accordingly, based on the Commission's conclusions that these various communications contain express advocacy, disbursements made to finance these communications constitute "expenditures" under 2 U.S.C. § 431(9)(A), the aggregate amount of which exceeds the \$1,000 statutory threshold for triggering political committee status. See 2 U.S.C. § 431(4)(A).

NAR 527's Major Purpose

20. The Commission concludes that NAR 527's spending indicates that its sole purpose is to advocate the election or defeat of federal candidates. In 2004, of the \$2,979,522 received by NAR 527 from NAR, NAR 527 spent \$2,275,887 on pamphlets and newspaper advertisements that clearly identified federal candidates and touted their

² The Hinojosa advertisement cost \$61,620.50, and the Hoyer advertisement cost \$33,455.64.

accomplishments shortly before the elections in which they were running. In addition, from March through June 2004, NAR 527 spent an additional \$534,072 on a website, email messages, and radio and television ads that clearly identified and touted the accomplishments of Johnny Isakson. Thus, the Commission concludes that by spending a substantial portion of the \$2,979,522 on federal campaign activity, NAR 527 satisfies *Buckley's* major purpose test.

21. In making the above-described expenditures, NAR 527 contends that it acted at all times with the good faith belief that its communications to the general public did not contain express advocacy under 11 C.F.R. §§ 100.22(a) or (b) and that none of the materials described herein include words that have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates, or that unambiguously and unmistakably suggest, exhort, or encourage readers to take any action. NAR 527 further contends that it operated with the good faith belief that the disbursements for such communications did not constitute expenditures under 2 U.S.C. § 431(9)(A).

V. In order to settle this matter and avoid the cost and time of further proceedings, and without admitting or denying the bases for the Commission's findings, for purposes of settlement, Respondent will no longer contest the Commission's conclusions that:

1. Respondent violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee.
2. Respondent violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions.

VI. Respondent agrees to do the following:

1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of \$78,000 pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee. Respondent will cease and desist from violating 2 U.S.C. § 441b(a) by accepting contributions from prohibited sources.

3. Respondent will register with the Commission as a political committee, file reports for 2004 and each subsequent year unless and until the Commission terminates such registration, and comply with any and all applicable provisions of the Act and Commission regulations. Respondent may submit to the FEC copies of their Form 8872 reports filed with the Internal Revenue Service for activities from January 1, 2003 until December 31, 2004, supplemented with the additional information that federal political committees are required to include on page 2 of the Summary Page of Receipts and Disbursements of FEC Form 3X.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated by Respondent, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

MURs 5577 and 5620
NAR 527 -- Conciliation Agreement

oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
Acting General Counsel

BY:


Ann Marie Terzaken
Acting Associate General Counsel
for Enforcement

Date

6/18/07

FOR THE RESPONDENT:


Ralph W. Holmen
Counsel to National Association of Realtors - 527 Fund

Date

May 1, 2007

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